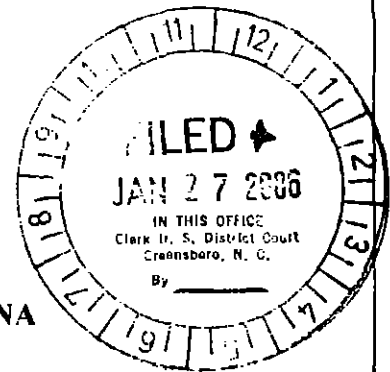


1 Law Offices of Robert W. Snyder
Robert W. Snyder, SBN 75064
2 15375 Barranca Parkway, Ste. B-105
Irvine, CA 92618
3 Tel: (949) 453-8688
Fax: (949) 453-8188

4 Attorney for Defendant

5 **UNITED STATES DISTRICT COURT**
6 **MIDDLE DISTRICT OF NORTH CAROLINA**
7



8 UNITED STATES OF AMERICA)

9 Plaintiff,)

10 vs.)

11 \$864,400.00 IN US CURRENCY, and)
12 \$7,000.00 in U.S. CURRENCY)

13)
14 Defendants)

15 STEVEN TAN)

16 Claimant/Owner)

17 vs.)

18 United States of America)

19 Plaintiff-Respondent)
20

Case No. 1:05CV00919

CLAIMANT'S REPLY TO
GOVERNMENT'S RESPONSE TO
CLAIMANT'S MOTION TO
DISMISS FOR LACK OF PROBABLE
CAUSE AND FAILURE TO STATE
SUFFICIENT FACTS TO SUPPORT
A FORFEITURE ACTION

21 NOW COMES the claimant, Steven Tan, by and through his counsel of record, Robert W.
22 Snyder, and replies to Plaintiff United States of America's Response ("government's response") to
23 Claimant's Motion to Dismiss Complaint for Lack of Probable Cause and for Failure to State
24 Sufficient Facts to Support a Forfeiture Action.

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26 ///

27 **ORIGINAL**

CLAIMANT'S REPLY TO GOVERNMENT'S RESPONSE TO CLAIMANT'S MOTION TO
DISMISS FOR LACK OF PROBABLE CAUSE AND FAILURE TO STATE SUFFICIENT
FACTS TO SUPPORT A FORFEITURE ACTION

1 **THE GOVERNMENT FAILED TO ESTABLISH**
2 **PROBABLE CAUSE TO SEIZE THE DEFENDANT MONEY**

3 While the government's response argues in the length as to how the government does not
4 need to have many details to support its civil forfeiture complaint, they continue to overlook the fact
5 that there was NO probable cause nor could they establish probable cause to support the seizure of
6 the defendant money

7 In a civil forfeiture action under Title 21 USC Section 881(a)(6), the government is required
8 to initially establish probable cause that the claimant's money was connected to drug or the alleged
9 illegal activity. **21 USC Section 881(d); 19 USC Section 1651; U.S. \$5,644,5400.00 in U.S.**
10 *Currency*, 799 F. 2d 1357, 1362 (9th Cir. 1986). Probable cause is not only required to support a
11 forfeiture action, but there must also be probable cause *at the time of the seizure* of the defendant
12 money. **The government cannot seize now, and gather probable cause later.** *Marine Midland*
13 *Bank v. U.S.* 1993 U.S. Dist. Lexis 6200 (S.D.N.Y., 1993).

14 In order to establish probable cause, the government must demonstrate by some credible
15 evidence the *probability* that the money was *in fact* connected to drugs. *U.S. v. Dickerson*, 873 F.2d
16 1181, 1184 (9th Cir. 1988).

17 Here, again, the government fails to establish the probability that the defendant money was **in**
18 **fact** "furnished or intended to be furnished in exchange for a controlled substance. ." Where are the
19 **facts** (as opposed to mere opinions) to establish such a probability? There are none except for the
20 only positive alert by narcotics detection dogs, which, if stands alone, has been held to lack any
21 probative value. *U.S. v. \$215,300 U.S. Currency*, 882 F 2d at 419.

22 The government argued that the defendant money was concealed in a unusual place and asked
23 the court to consider that, i.e., the unusual place, as a fact to support their argument that there was
24 probable cause. This is quite a desperate stretch. Of course the money had to be concealed in an
25 unusual place, especially when there is a lot of money at stake. Any sane person who is in possession
26 of such a large sum of money would of course hide the money so carefully and in such an unusual
27

1 place in order to minimize the risk of being robbed. That was something that anyone in the same
2 position as claimant would have done and that, alone, cannot establish the existence of probable cause
3 to legitimize a seizure of almost a million dollars.

4 Furthermore, a careful review of the facts and the chronology of events that took place the
5 day the defendant monies were seized and claimant was briefly detained, would reveal that the
6 government had no probable cause to seize the defendant monies and there was no probable cause at
7 the time of seizure. The government alleges in very general language that it was in Special Agent
8 Joseph Barringer's *opinion* that the subject currency "were furnished or intended to be furnished in
9 exchange for a controlled substance or represent proceeds traceable to such an exchange and are
10 therefore forfeitable pursuant to 21 U.S.C. §881(a)(6)." (Decl. Of Barringer, Pg. 6, Concl.) Yet,
11 absolutely no concrete facts of any kind were provided in either the body of the complaint or in the
12 supporting Affidavit of Mr. Joseph Barringer to substantiate Mr. Barringer's "opinion".

13 Mr. Barringer stated in his Affidavit that after the defendant monies had been seized and
14 Claimant had been taken to the local police station, he caused a search of the ICE databases and
15 reported that Claimant has prior arrests for Alien Smuggling and for Attempted Alien Smuggling.
16 (Decl. Of Barringer, p.5, ¶9). This is completely untrue. Claimant has never been "arrested" for any
17 crime whatsoever. He was stopped, questioned, but ultimately released (See attached "Affidavit of
18 Steven Tan"). What Mr. Barringer did here is a classic example of what the court in *Marine Midland*
19 *Bank v. U.S.* (1993) held to be improper- "seize now and gather probable cause later". *Marine*
20 *Midland Bank v. U.S.* 1993 U.S. Dist Lexis 6200 (S.D.N.Y., 1993). The seizure of the defendant
21 monies and the interrogation of Claimant that violates Claimant's fundamental constitutional rights
22 for counsel and interpreter, were nothing more but an ad hoc attempt to "gather probable cause later"
23 to support an otherwise wrongful and illegal seizure of property. In summary, the seizure of the
24 defendant monies that occurred on June 21, 2005 was unlawful and was violative of the U.S.
25 Constitution.

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PROOF OF SERVICE U.S. MAIL

STATE OF CALIFORNIA, COUNTY OF ORANGE

I am employed in the County of Irvine, State of California. I am over the age of eighteen years and not a party to the within action; my business address is 15373 Barranca Parkway, Ste. B-105, Irvine, California 92618

On January 23, 2006 I served by regular U.S. Mail the foregoing document described as

**CLAIMANT'S REPLY TO GOVERNMENT'S RESPOSNE TO
CLAIMANT'S MOTION TO DISMISS COMPLAINT FOR FORFEITURE**

on the interested parties in this action:

___ by placing a true copy thereof in sealed envelopes addressed as stated on the attached mailing list:

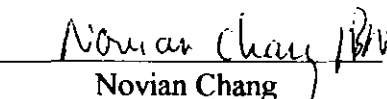
X by placing ___ the original X a true copy thereof enclosed in sealed envelopes addresses as follows:

United States Attorney's Office
P.O. Box 1858
Greensboro, NC 27402

Executed on January 23, 2006 at Irvine, California.

X (STATE) I declare under penalty of perjury that the above is true and correct.

___ (FEDERAL) I declare that I am employed in the office of a member of the bar of this court at whose direction the service was made.


Novian Chang